

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HEALTH

In the Matter of Lake and Grand  
Market

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter was heard by Administrative Law Judge Beverly Jones Heydinger, commencing at 9:30 a.m., March 2, 2000 at the Office of Administrative Hearings, and continuing on March 15, 2000. The hearing was held pursuant to a Notice of and Order for Hearing dated February 10, 2000. Jennifer L. Beens, Assistant Attorney General, Suite 1200, NCL Tower, 445 Minnesota Street, St. Paul, MN 55101 appeared for the Department of Health. Dewey M. Nelson, Attorney at Law, 327 South Marshall Road, Suite 355, Shakopee, MN appeared on behalf of the Lake and Grand Market. The record closed on April 14, 2000, upon receipt of the final post-hearing submissions of counsel.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Health will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Parties should contact Jan Malcolm, Commissioner, Minnesota Department of Health, 85 East Seventh Place, Suite 400, St. Paul, MN 55101, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

Did Lake and Grand Market charge the WIC program for items that were not provided to a WIC customer?

Did Lake and Grand Market charge the WIC program more than its usual and customary charge for WIC-covered items?

Did the Department consider hardship to the participants in its decision to disqualify Lake and Grand Market?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Department of Health administers the Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program) in Minnesota. It provides pregnant women, nursing mothers, infants, and children up to the age of five with supplemental food, nutrition education, and health care referrals.<sup>[1]</sup>

2. Lake and Grand Market is a retail food store located at 313 West Lake Street, Minneapolis, Mn. It is owned by Abdullahi Warsame.

3. Mr. Warsame came to the United States as a refugee in 1992 because of the Civil War in Somalia. He was the mayor of Mogadishu from 1980–1982, oversaw ports and shipping for Somalia in 1988 and 1989, and was an executive with a Somalian airline in 1989 and 1990. In 1986, Mr. Warsame earned an M.B.A. from the University of California–Fresno. In 1995, he completed a Masters in Applied Economics at American University. He has owned the Lake and Grand Market since June, 1998.

4. The Department authorized Lake and Grand Market to participate as a vendor in the WIC program on June 25, 1998. Mr. Warsame signed an agreement to participate with WIC. That agreement sets out the conditions for participation. It expired on April 30, 2000.<sup>[2]</sup>

5. Training is required for new WIC vendors.

If a vendor's application is approved, then at least one management representative of that applicant must complete a WIC approved training course specified by the commissioner, sign a training verification form provided by the commissioner to verify completion of the WIC-approved training course, and submit this signed training verification form to the commissioner.<sup>[3]</sup>

6. No WIC approved training course was offered to the management of Lake and Grand Market. Since April, 1998, training has been done for a new vendor at its place of business.<sup>[4]</sup> On June 24, 1998, Peter Kuzj, a WIC employee involved in the certification of vendors, went to Lake and Grand Market and reviewed the program requirements with a management representative, Mahamoud Ahmed.<sup>[5]</sup>

7. Lake and Grand Market also received a manual that covers the program requirements.<sup>[6]</sup> It explains the procedures for redeeming a WIC voucher.<sup>[7]</sup> The manual includes a cashier check-list and list of important points about WIC for training the vendor's cashiers.<sup>[8]</sup> The points covered in the manual are consistent with Department's rules for vendors, and with the provisions of the vendor agreement.<sup>[9]</sup>

8. Managers are responsible for training cashiers about the WIC program.<sup>[10]</sup> Employees who accept vouchers for the vendor must be able to read and understand them.<sup>[11]</sup>

9. When authorized to participate as a vendor in the WIC Program, a vendor is issued a vendor stamp with a unique vendor number. Lake and Grand Market's vendor number is 0046.<sup>[12]</sup>

10. Eligible participants in the WIC Program receive vouchers that can be redeemed with WIC vendors for the WIC-approved foods listed on the voucher.<sup>[13]</sup>

11. When a vendor receives a WIC voucher from a program participant, it fills in the amount charged for the food listed on the voucher and purchased by the participant, and checks that the participant's signature on the voucher matches the signature on the participant's WIC identification folder. The vendor stamps its vendor number on the voucher, deposits the voucher into its bank account, just as it would a personal check, and the WIC program covers the voucher.<sup>[14]</sup>

12. Lake and Grand Market accepts approximately 30 to 40 WIC vouchers each day.<sup>[15]</sup>

13. To check compliance with the WIC rules and federal regulations, WIC sends undercover investigators to WIC vendors, posing as WIC customers. Purchases made by these investigators are called "compliance buys."<sup>[16]</sup>

14. On August 25, 1999, A.H., an undercover investigator,<sup>[17]</sup> posing as a WIC customer, conducted a compliance buy at Lake and Grand Market. The investigator took the items she wished to purchase to the cashier and presented her WIC voucher. She did not purchase all of the items on the voucher.<sup>[18]</sup> The cashier did not enter the price of the food items purchased on the voucher.<sup>[19]</sup> When the voucher was returned to the WIC program, routed by the vendor through its bank, the amount entered on the voucher was \$26.22.<sup>[20]</sup>

15. On October 20, 1999, K.H., an undercover investigator, conducted a compliance buy at Lake and Grand Market. K.H. took the items she wished to purchase to the cashier and presented her WIC voucher. The cashier did not enter the price of the food items purchased on the voucher.<sup>[21]</sup> When the voucher was returned to the WIC program, routed by the vendor through its bank, \$17.54 had been written on the voucher, crossed out, and \$27.52 written over it.<sup>[22]</sup> K.H. did not purchase all of the items on the voucher, but Lake and Grand Market calculated the \$27.52 by totaling all items on the voucher.<sup>[23]</sup>

16. On November 9, 1999, K.H. conducted a compliance buy at Lake and Grand Market. K.H. took the items she wished to purchase to the cashier and presented her WIC voucher. The cashier wrote the price of the items purchased, \$23.53, on the voucher. When the voucher was returned to the WIC program, routed by the vendor through its bank, \$23.53 had been crossed out, and \$27.52 written over it. K.H. did not purchase all of the items on the voucher, but Lake and Grand Market calculated the \$27.52 by totaling all items on the voucher.<sup>[24]</sup>

17. On November 18, 1999, K.H. conducted a compliance buy at Lake and Grand Market. K.H. took the items she wished to purchase to the cashier and presented her WIC voucher. No price was entered on the voucher at the time of the sale. When the voucher was returned to the WIC program, routed by the vendor through its bank, it listed \$23.53 as the value of the food purchased.<sup>[25]</sup>

18. On November 24, 1999, K.H. conducted a compliance buy at Lake and Grand Market. K.H. took the items she wished to purchase to the cashier and

presented her WIC voucher. No price for the items purchased was written on the voucher at the time of the sale. When the voucher was returned to the WIC program, routed by the vendor through its bank, \$17.65 had been written on the voucher, but crossed out and \$20.54 written above it.<sup>[26]</sup>

19. On the following dates, WIC investigators conducted compliance buys at Lake and Grand Market and found no violations: October 13, October 27, October 30, and December 30, 1999.<sup>[27]</sup> The report of the compliance buy for October 27, 1999, shows an undercharge of \$1.40.<sup>[28]</sup>

20. A WIC vendor may not charge the WIC Program more money for an item than the Vendor's usual and customary charge for that item, and may only charge the WIC program for items received by a WIC customer.<sup>[29]</sup>

21. WIC vendors are instructed to insert the price of the food purchased on the voucher before the WIC customer signs the voucher.<sup>[30]</sup>

22. Lake and Grand Market instructed its cashiers to check off the items not purchased, if not all items were purchased, total the items purchased, and fill in the correct price. Each Lake and Grand Market employee who testified was familiar with the requirements for accepting vouchers.<sup>[31]</sup> At the end of the day, the night manager reviewed the WIC vouchers submitted that day. If no items were checked on the voucher, he assumed that all items were purchased in the maximum allowable amount and calculated the price of those items. If the amount calculated was greater than the amount entered on the voucher, the night manager changed the voucher, assuming that the cashier had made an error. In some instances, he spoke to the cashier to clarify. There was no way to tell from the face of the voucher if all items had been purchased in the maximum allowable amount.<sup>[32]</sup>

23. On December 15, 1999, Freddie Marsh-Lott, the lead investigator for the Department, went to Lake and Grand Market to check the prices of items that had been purchased during the compliance buys but were not marked on the items at the time that they were purchased. During the same visit, Mr. Marsh-Lott discussed WIC program requirements with Mr. Ali Warsame.<sup>[33]</sup>

24. Using this price information, Mr. Marsh-Lott calculated the price of the items purchased during each of the five compliance buys, and compared the price to the amount written on the respective voucher. He calculated the following overpayments:

August 25 - \$8.28  
October 29 - \$4.59  
November 9 - \$5.39  
November 18 - \$1.40  
November 24 - \$1.42

25. The actual price for each item purchased can not be definitively determined. Mr. Abdullahi Warsame acknowledged that he does not buy in bulk, he uses small suppliers, and prices for certain items may vary from time to time.<sup>[34]</sup>

However, some discrepancies in the charges are apparent from the prices marked on the packages, and from the calculations done by Mr. Jama.

26. For the purchases on August 25, Lake and Grand sold two containers of juice to the investigator but charged the WIC Program for four containers. Also, in making his calculation, Mr. Jama used a higher price for the two boxes of cereal than appeared on the cereal boxes at the time of the sale. Thus, Lake and Grand Market did charge more than was usual and customary for the cereal and did charge for juice that was not purchased.

27. For the purchases made on October 20, Mr. Marsh-Lott and Mr. Jama calculated the price of the items purchased at \$23.53.<sup>[35]</sup> The voucher initially was filled out for \$17.54. The night manager, Mr. Ali Warsame, believed that there was an error. He saw no items checked off on the voucher, concluded that that all items had been purchased, and changed the amount to \$27.52.<sup>[36]</sup> No cheese was purchased. Thus, Lake and Grand Market did charge the WIC program for items not purchased by the investigator on that date.

28. To calculate the price of the purchases made on November 9, Mr. Marsh-Lott used the price of frozen juice in December and Mr. Jama used the current price for 46-ounce containers, rather than the price for the frozen juice purchased. The actual price of the juice purchased cannot be determined. However Lake and Grand Market did overcharge the WIC program for cheese that was not purchased. Mr. Ali Warsame changed the total on the voucher because no items were checked off and he concluded that all items were purchased.<sup>[37]</sup>

29. To calculate the price of the purchases made on November 18, Mr. Marsh-Lott used the price of frozen juice on December 15, and Mr. Jama used the current price for 46-ounce juice containers, rather than the price for the frozen juice purchased. Their calculations vary by \$1.40. The actual price of the juice at the time of sale cannot be determined. Thus the Department did not prove that an overcharge occurred on this date.

30. To calculate the price of the purchases made on November 24, Mr. Marsh-Lott used the price of frozen juice on December 15, and Mr. Jama used the current price for 46-ounce juice containers, rather than the price for the frozen juice purchased. Their calculations vary by \$1.42. The actual price of the juice at the time of sale cannot be determined. Thus the Department did not prove that an overcharge occurred on this date.

31. Mr. Bdulkdir Mohamed has been a cashier at Lake and Grand Market since August 8, 1999.<sup>[38]</sup> He is familiar with the process for accepting WIC vouchers. He was trained to ring up the items presented by the customer, and to enter the price on the voucher for those items prior to signature by the customer. He was also trained to place a check mark beside items that were not purchased.<sup>[39]</sup>

32. Mr. Ali Warsame has been employed at Lake and Grand Market for about two years. He is familiar with the process for accepting WIC vouchers. Mr. Abdullahi Warsame trained him to ring up the items to be purchased, write the price on the voucher for those items, and ask the customer to sign the voucher. He was trained to place a check mark beside items that were not purchased. Mr. Ali Warsame acknowledged that he had changed the entry on Exhibit 7 because the voucher total did not reconcile with the items purchased. Mr. Warsame spoke with the cashier who handled the sale and made the change to the voucher. At the time the cashier had been working at Lake and Grand Market for a week or two. Mr. Warsame also acknowledged that he changed the totals on Exhibits 4 and 5 because no items had been checked off the voucher. He assumed that all items had been purchased, that the cashier made an error, and that the total was incorrect. His initials appear on each of the three vouchers.<sup>[40]</sup>

33. The WIC voucher lists certain approved foods. Neither the voucher itself nor the WIC Training Manual are explicit about how to indicate on the voucher if the participant purchased fewer foods than authorized, or in smaller amounts than authorized. Also, there is no way to tell what price was paid for a particular item. However, if the vendor marks the actual total price of the purchases on the voucher at the time of the sale, that total should match the items purchased. In this case, the WIC program was charged for items that were not purchased at all. Lake and Grand Market altered the total stated on Exhibits 4 and 5 even though it did not know the actual items purchased. Apparently the total on Exhibit 3 was not entered at the time of the sale.

34. Mr. Marsh-Lott met with other WIC staff members to determine if action should be taken against Lake and Grand Market because of the overcharges. Before a decision to disqualify Lake and Grand Market was made, the Department considered whether disqualification would cause participant hardship. Because there were other WIC vendors within a one-mile radius of Lake and Grand Market, and public transportation was available, it determined that there would be an adequate number of available vendors and no participant hardship.<sup>[41]</sup>

35. In evaluating applications for new WIC vendors, the Department's rules require that:

In determining whether participant hardship exists in a particular area, the commissioner shall consider the following factors:

- A. the number of participants in the area;
- B. the number of retail food vendors or pharmacy vendors in that area;
- C. the proximity of retail food vendors or pharmacy vendors to participants in that area;
- D. the availability of public roads and public transportation in that area; and



- E. whether there is a documented cultural or religious need for an additional retail food vendor in that area.<sup>[42]</sup>

There are no standards that directly relate to “participant hardship” when the Department considers disqualification.

36. About 80% of the customers of Lake and Grand Market are Somalian. Its staff speaks Somalian and is familiar with the Somalian culture and the religious tenets held by many Somalians. The staff is able to translate label information for its Somalian customers who lack the necessary English proficiency. The staff also helps translate the items listed on the WIC voucher and locate those items in the store. The store carries certain items that are not generally available in local groceries and are commonly used in Somalian cooking.<sup>[43]</sup>

37. One of the customers at Lake and Grand Market, Farhi Awil, testified through an interpreter. She has four young children. She speaks Somalian but does not speak English. Lake and Grand Market staff assist her with purchasing WIC-approved food, and give her a ride home. All items on the voucher must be purchased at one time or not at all. It is difficult for her to carry all of the items and take public transportation with her children. Her husband works two jobs and helps when he can with large shopping trips. Sometimes the vouchers expire if she can not get to a grocery to purchase milk and infant formula. Other vendors in her area do not have staff who speak Somalian and she cannot communicate with them. She does not know if those vendors would give her a ride because she cannot communicate with them, but she is not aware that they offer the service.<sup>[44]</sup>

38. Ms. Awil’s husband has been able to use some WIC vouchers since Lake and Grand was disqualified, but it is more difficult for the family to use the vouchers.<sup>[45]</sup>

39. There are other WIC vendors within a one-mile radius of Lake and Grand Market, and those vendors are accessible by public transportation.<sup>[46]</sup> They do not have staff who speak Somalian or are familiar with the Somalian culture.

40. The Department notified Lake and Grand Market by letter dated January 18, 2000, that it had five violations of the WIC rules and would be disqualified from the WIC Program.<sup>[47]</sup> There was no warning given prior to the disqualification.<sup>[48]</sup>

41. By letter dated January 31, 2000, Lake and Grand Market appealed the Department’s disqualification.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS

1. The Department of Health and the Administrative Law Judge have jurisdiction in this matter.<sup>[49]</sup>

2. The Department gave proper notice of this hearing and has complied with all relevant substantive and procedural requirements of statute.

3. The Department has the burden of proving by a preponderance of the evidence that the alleged violations occurred, and that disqualification will not create undue hardship for participants.

4. Minnesota Rules pt. 4617.0086, subp. 3 provides in relevant part:

Itemization of Class A violations...

(A) charging the WIC Program for items not received by a WIC customer;...

(L) charging the WIC Program more money for an item than the vendor's usual and customary charge for that item;

5. The Department has proven by a preponderance of the evidence that, on three occasions, August 25, October 20 and November 9, 1999, Lake and Grand Market did charge the WIC program for items not received by a WIC customer in violation of Minn. Rules pt. 4617.0086, subp. 3(A). These are Class A violations.

6. The Department has proven by a preponderance of the evidence that on August 25, 1999 Lake and Grand Market charged the WIC program more for an item than the vendor's usual and customary charge for that item in violation of Minn. Rules pt. 4617.0086, subp. 3(L). This is a Class A violation.

7. Prior to disqualifying a food vendor, the State agency must consider whether the disqualification would create undue hardship for participants.<sup>[50]</sup> The Department did consider undue hardship.

8. The federal regulations require that a disqualification "shall be a reasonable period of time, not to exceed three years. The maximum period of disqualification shall be imposed only for serious or repeated Program abuse."<sup>[51]</sup> The Department's rules allow disqualification for the maximum period for more than one Class A violation.<sup>[52]</sup>

9. This report is subject to review by the Commissioner of Health; it is not the final disposition.

10. Any Findings of Fact that are more appropriately described as Conclusions are adopted as Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

#### RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Department's decision to disqualify Lake and Grand Market be AFFIRMED.



The Protective Order issued in this case on February 18, 2000, protecting the identities of the undercover investigators for the Department shall remain in effect.

Dated this 15<sup>th</sup> day of May, 2000.

S/Beverly Jones Heydinger

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BEVERLY JONES HEYDINGER  
Administrative Law Judge

Reported: Tape-recorded (six tapes)

### NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Department is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

### MEMORANDUM

The Department must demonstrate by a preponderance of the evidence that there was more than one Class A violation of the statutes or rules governing WIC vendors, and that, if such violations occurred, it considered whether disqualification from the program would create a hardship for the participants in the WIC program. The Department has met its burden of showing that the violations occurred, and that it considered the hardship to the participants in reaching its decision to disqualify Lake and Grand Market.

### Violations

Lake and Grand instructed its cashiers to check off items not purchased, total the items purchased and fill in the correct price. At the end of the day, the night manager reviewed the vouchers. In some instances, the night manager changed the total amount on the voucher.

There were no items checked on Exhibit 3. Thus one of the employees concluded that all items had been purchased and filled in \$26.22 on the voucher, doubling the amount of juice purchased and charging more for cereal than the price marked on the cereal. Thus the total on the voucher did not correctly reflect the actual price of the items purchased.

No items were checked on Exhibits 4 or 5. The night manager assumed that all items had been purchased and the clerk who filled in the total had made an error. The manager changed the total to \$27.52 in each instance. This did not accurately reflect the actual items purchased. Such errors may have been caused by the cashier but it is apparent that the managers and employees who testified were familiar with the WIC rules and the correct way to process vouchers. Rather than assuming that the total on the voucher was correct and that the cashier forgot the check marks, the night manager assumed the total on the voucher was incorrect and changed it without knowing which items were purchased.

## **Sanction Authority**

No warning of the overcharges was given to Lake and Grand Market. The Department's position is that no warning is needed for Class A violations, such as overcharging and charging for goods not purchased. It relies on Minn. Rules pt. 4617.0086, subp. 2 and 3. Technically, no notice is required by these rules. However, neither is notice prohibited. The applicable federal regulations provide that prior warning and the opportunity to correct are appropriate factors for a state to consider in sanctioning the vendor. It states:

The State agency shall establish policies which determine the type and level of sanctions to be applied against good vendors, based upon the severity and nature of the Program violations observed, and such other factors as the State agency determines appropriate, such as whether the violation represented repeated offenses over a period of time, whether the offenses represented vendor policy or whether they represented the actions of an individual employee who did not understand Program rules, and whether prior warning and an opportunity for correction was provided to the vendor.<sup>[53]</sup>

The Department has chosen to consider only the severity and nature of the program violations in determining its penalty.

The Department takes the position that disqualification for three years is mandatory for more than one Class A violation. This misstates both the Department rules and the federal regulations. The Department's rule states that:

The disqualification shall be effective for one year for the vendor's first Class A violation. For each additional Class A violation committed by the vendor, the commissioner shall disqualify the vendor for the maximum period authorized in 17 CFR § 246.12 (k)(ii).<sup>[54]</sup>

The applicable federal regulation does not require a three year disqualification. It states:

The period of disqualification from Program participation shall be a reasonable period of time, not to exceed three years. The maximum period of disqualification shall be imposed for serious or repeated Program abuse.<sup>[55]</sup>

Thus, the maximum disqualification allowed under the federal regulations is three years, but it is not required. It is appropriate for the commissioner to consider whether the violations in this case are so serious as to justify the most severe penalty. There were four Class A violations but there are other circumstances. First, Lake and Grand Market was a new vendor. Second, training for the vendor was informal.<sup>[56]</sup> Third, on several compliance buys, there were no violations. Fourth, because of the

design of the voucher there is no way to designate the precise quantity and price of the items actually purchased. Mr. Ali Warsame admitted that he changed the vouchers, and the change was apparent on the face of the voucher. Fifth, two violations arose from the same transaction. Once an error was caught by WIC staff, it could have been raised with staff of Lake and Grand Market. However, the WIC program waited for more than one overcharge to occur before it brought the matter to the vendor's attention, and did so by sending the disqualification letter.

Mr. Marsh-Lott testified that action is generally not taken after just one compliance buy because mistakes do happen. Thus, a vendor first learns of a serious violation only after a second one occurs and when a three-year disqualification is imposed.

Mr. Marsh-Lott acknowledged that he went to Lake and Grand Market on December 15, 1999 to check the vendor's stock and prices and that he reviewed certain aspects of the WIC program with the manager on duty. Yet even on this date Mr. Marsh-Lott did not tell Lake and Grand Market that there had been overcharges. He acknowledged that he reviewed some B and C-level violations from prior buys, and that Mr. Warsame seemed to understand the WIC rules and voucher processing.

Mr. Marsh-Lott does not believe a notice or warning is needed when there has been an overcharge because, in his opinion, this is not a training issue. But in this instance where investigators did not purchase all items, and the sales clerk handling some of the transactions was new, some leeway may be appropriate.

For these reasons, the commissioner should reconsider whether the maximum penalty is appropriate.

### **Hardship to Participants**

The federal regulations require that the Department "shall consider whether the disqualification would create undue hardships for participants."<sup>[57]</sup> That requirement is not incorporated into the Department's rule that governs sanctions.<sup>[58]</sup>

The Department does evaluate participant hardship in reviewing new vendor applicants, and includes criteria in its rule.<sup>[59]</sup> Apparently not all of the considerations for new vendors are applied to the disqualification decision. Mr. Chait testified about the criteria he considers to determine "participant hardship" in the disqualification process. The criteria were quite similar to those used to evaluate new vendors but with a key difference. Mr. Chait testified that the language and culture of participants are not considered, nor is the Department concerned about special non-WIC foods that the vendor may carry. In the application process, the cultural and religious needs of participants may be relevant. One of the criteria is:

Whether there is a documented cultural or religious need for an additional retail food vendor in that area.<sup>[60]</sup>

Given this criteria in the application review, it is difficult to understand the Department's failure to consider it in the disqualification.

Lake and Grand Market presented testimony from its employees and a program participant that the market served predominantly Somali customers, that it stocked foods consistent with their religious and cultural dietary customs and that employees could read labels and items listed on the WIC vouchers to help the customers make the appropriate selections. Mr. Chiat testified that knowledge of English wasn't necessary because food pictures are provided. However, pictures do not help the customer read the items listed on the voucher, nor do the pictures assure customers of the package contents.

There are other WIC vendors in the vicinity of Lake and Grand Market. There was no evidence that nearby vendors could meet the religious and cultural needs of Somali participants. The Department asserts that the disqualification of Lake and Grand Market is merely an inconvenience to participants and not a hardship. The WIC participant who testified had in fact, exchanged vouchers at nearby stores.

The Department did consider participant hardship in reaching a decision to disqualify Lake and Grand Market and thus complied with the federal regulations. Yet it has no criteria for its decision and did not apply the criteria it has for new applicants. It failed to consider the special cultural concerns of the participants, and yet neither its rules nor the federal regulations require it to do so.

B.J.H.

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<sup>[1]</sup> Testimony of Rick Chiat; Minn. Stat. § 145.894 (1998).

<sup>[2]</sup> Id.; Ex. 2. Expiration does not make this proceeding moot. Minn. Rules pt. 4617.0086, subp. 8.

<sup>[3]</sup> Minn. Rules pt. 4617.0065, subp. 7A.

<sup>[4]</sup> Testimony of R. Chiat.

<sup>[5]</sup> Testimony of R. Chiat; Ex. 8.

<sup>[6]</sup> Ex. 12.

<sup>[7]</sup> Id., p. 3

<sup>[8]</sup> Id., and attached exhibits D and E.

<sup>[9]</sup> Minn Rules pt. 4617.0068; Ex. 2.

<sup>[10]</sup> Minn. Rules pt. 4617.0068, subp.7; Ex. 2, p.8.

<sup>[11]</sup> Minn. Rules pt. 4617.0067, subp. 4D.

<sup>[12]</sup> Testimony of R. Chiat, Ex. 1.

<sup>[13]</sup> Testimony of R. Chiat.

<sup>[14]</sup> Id.

<sup>[15]</sup> Testimony of Abdul Jama, store manager.

<sup>[16]</sup> Testimony of Freddie Marsh-Lott.

<sup>[17]</sup> The identity of the undercover investigators who testified in this proceeding has been disclosed to Lake and Grand Market, but is protected by an order issued on February 18, 2000.

<sup>[18]</sup> Testimony of A.H., Abdul Jama; Ex. 39.

<sup>[19]</sup> Test. of A.H.; Ex. 13, 18.

[20] Ex. 3.  
[21] Testimony of K.H., Ex. 14, 19.  
[22] Ex. 4.  
[23] Test. of K.H., A. Jama; Ali Warsame, Ex. 40.  
[24] Test. of K.H., A. Jama; Ali Warsame, Ex. 5, 15, 41.  
[25] Test. of K.H., A. Jama, F. Marsh-Lott, Ex. 6, 16, 34, 42.  
[26] Test. of K.H., A. Jama, Ex. 7, 17, 43.  
[27] Ex. 49–51, 53.  
[28] Ex. 50.  
[29] Ex. 2, p. 3, 4; Minn. Rules pt. 4617.0086, subp. 3(A) and (L).  
[30] Ex. 2, page 5, Ex. 8.  
[31] Testimony of Abdullahi Warsame, Ali Warsame, A. Jama, BULKHU Mohamed.  
[32] Testimony of A. Jama, Abdullahi Warsame; Ex. 3-7.  
[33] Testimony of F. Marsh-Lott; Ex. 9 (also Ex. 29).  
[34] Compare price differences on Monitoring Report dated December 15, 1999 (Ex. 28) and Vendor Authorization Application dated December 13, 1999 (Ex. 55).  
[35] There is an addition error on Ex. 32; the total of the prices listed is \$23.53, not \$22.93.  
[36] Testimony of Ali Warsame.  
[37] Testimony of Ali Warsame.  
[38] Mr. Mohamed testified through an interpreter.  
[39] Testimony of B. Mohamed.  
[40] Testimony of Ali Warsame.  
[41] Testimony of R. Chiat.  
[42] Minn Rules, pt. 4617.0069, subp. 1.  
[43] Testimony of Abdullahi Warsame, BULKDIR Mohamed.  
[44] Testimony of Farhi Awil.  
[45] Id.  
[46] Testimony of R. Chiat.  
[47] Ex. 36.  
[48] Testimony of R. Chiat.  
[49] Minn. Stat. § 14.55 (1998); Exhibit 1.  
[50] 7 C.F.R. § 246.12 (k)(1)(v).  
[51] 7 C.F.R. § 246.12 (k)(1)(ii).  
[52] Minn. Rules pt. 4617.0086, subp. 2A.  
[53] 7 CFR § 246.12(K)(I) (emphasis added).  
[54] Minn. Rules pt. 4617.0086, subp. 2A.  
[55] 7 CFR § 246.12 (k)(1)(ii). (emphasis added)  
[56] Lake and Grand Market complained that the Department did not provide appropriate training. Yet all of the managers and employees who testified were familiar with the rules at issue here.  
[57] 7 CFR § 246.12 (k)(1)(v).  
[58] Minn. Rules pt. 4617.0086.  
[59] Minn. Rules pt. 4617.0069, subp. 1.  
[60] Id.